

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 953 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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SHASHIKANT K CHAUHAN

Versus

BALVANTRAI K CHAUHAN

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Appearance:

MR MEHUL M SHAH for Petitioners

MR GIRISH D BHATT for Respondent No. 3, 4, 5

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 18/09/97

ORAL JUDGEMENT

1. The petitioners before this Court were the applicants before the Joint District Judge at Rajkot in Misc. Civil Application (Review) No. 3 of 1986 at Exhibit 3. The respondents before this Court are the original appellants in the Appeal which was preferred under Order 43 Rule (1)(r) of the Code of Civil Procedure being Civil Misc. Appeal No. 252 of 1985.

2. The respondents before this Court filed a Regular Civil Suit No. 1112 of 1985 in the Court of Civil Judge, Junior Division, Rajkot, inter alia, contending that the shops situated at Garediya Kuva Road, Rajkot was of their ownership and that they were carrying on business of Agricultural Diesel Spareparts and that the other party, namely, the petitioners herein were trying to interfere with their possession and, therefore, they filed the suit for permanent injunction and also by application for temporary injunction applied for temporary injunction. In the said suit, the present petitioners produced two Wills of the deceased father Karsanbhai Pragijibhai Chauhan, one being dated 11th January, 1976 and another being dated 16th March, 1977. According to the petitioners, the deceased father Karsanbhai Pragijibhai Chauhan bequeathed the rights in respect of the shops at aforesaid Garediya Kuva Road as well as in respect of the shop situated at Dhebarbhai Road, Rajkot, in favour of Shashikant Karsanbhai Chauhan, the petitioner herein. Petitioners also relied upon one Vyavastha Patrak dated 5th February, 1974 to establish that the said two shops were occupied by petitioners and they were doing their business in the name of "Agriculture Diesel Spareparts" while deciding Exhibit 5 application, the trial court by judgment and order dated 10th December 1985, granted the injunction as prayed for by the plaintiffs.

3. Being aggrieved by the aforesaid judgment and order of the trial court, the original defendants preferred Civil Misc. Appeal No. 252 of 1985 in the District Court at Rajkot, which was allocated for disposal to Extra Assistant Judge, Rajkot, who by judgment and order dated 9th July, 1986, allowed the said Appeal and quashed and set aside the order of the trial court. It appears that thereafter the present petitioners moved the Misc. Civil Application (Review) No. 3 of 1986 in the said Appeal which was already decided for review of judgment and order of the lower appellate court and the Joint District Judge, Rajkot, by the impugned judgment and order dated 21st June, 1994 rejected such application for review and production of additional evidence. Being aggrieved by such judgment and order of the Joint District Judge, Rajkot, passed in Review Application for production of additional evidence, the present Civil Revision Application is filed.

4. Mr. Mehul M. Shah, learned counsel appearing for the petitioners has placed reliance upon the provisions as regards review of the order contained in Order 47 Rule (1) read with Rule (5) of the Code of Civil Procedure.

Order 47 Rule (1) which deals with application for review of judgment, inter alia, provides that any person considering himself aggrieved by a decree or order from which an appeal is allowed or by a decree or order from which no appeal is allowed and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order. Rule (5) of Order 47 is also pressed into service, which reads as under :

5. Application for review in Court consisting of two or more Judges -- Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

5. Mr. Mehul M.Shah placed much reliance upon the word or Article "the" and submitted that Review Application for additional evidence tendered in Review Application could not have been decided by any court other than the court of Extra Assistant Judge, Rajkot and in any case, Joint District Judge, Rajkot, could not have decided such application.

6. Though the question shall have to be considered in appropriate case as and when raised, but, in the present case, looking to the fact that there are two rival suits, being Regular Civil Suit No. 1112 of 1985 and Regular Civil Suit No. 1145 of 1985 filed in the Court of Civil Judge, Junior Division at Rajkot and almost a period of 12 years has expired thereafter and in view of the fact that the learned Single Judge of this Court while issuing Notice as well as Rule, granted stay of the further proceedings of Civil Review Application No. 3 of 1986, the interest of justice will be met, if,

without deciding the controversy which is raised by Mr. Mehul M.Shah, the District Judge, Rajkot is directed to order the aforesaid two suits to be placed before the one Civil Judge, Junior Division at Rajkot with further direction to him as well as to the Civil Judge, Junior Division, to see that the suits are taken up for hearing day-to-day and are finished by judgment by 30th April, 1998 and it will be open to the trial court even to proceed with suits during vacation and the parties would co-operate in proceeding with the suits and the District Judge shall keep track of the proceeding before the trial court so as to report to this court that the directions of this court are carried out by the trial court and suits are disposed of on or before 30th April, 1998.

7. It is clarified that the impugned judgment in this Civil Revision Application as well as this order of the court in any case would not preclude the present petitioners from producing those very documents before the trial court.

8. In the result, the Civil Revision Application stands disposed of. Rule is discharged. There shall be no order as to costs.

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